

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN WEBB, JR.	:	CIVIL ACTION
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, <u>et al.</u>	:	NO. 98-2261

**MEMORANDUM AND ORDER**

BECHTLE, J. APRIL , 2000

Presently before the court are plaintiff John Webb Jr.'s ("Plaintiff") motion for reconsideration and petition to enforce the settlement and defendants the City of Philadelphia's, the Sheriff of Philadelphia's, Gregory Moses', James Smith's, Luigi Accardo's, Frank Spattocco's, Shaheed Newton's and David Rotan's (collectively "Moving Defendants") responses thereto. For the reasons set forth below, the court will deny the motion and the petition. Also before the court is Moving Defendants' motion to vacate the October 8, 1999 Order dismissing the case. For the reasons set forth below, the court will grant the motion.

**I. BACKGROUND**

On March 20, 1998, Plaintiff filed a civil action against Moving Defendants and Frederick Bullock in the Court of Common Pleas of Philadelphia County.<sup>1</sup> Plaintiff, who was assaulted by Frederick Bullock, alleges that Moving Defendants violated, inter alia, his Fourteenth Amendment rights by creating the danger that

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<sup>1</sup> A description of the course of this litigation appears in the court's Order dated October 6, 1999, which the court incorporates herein by reference.

caused his injuries. Moving Defendants removed the action to this court on April 29, 1998, and on April 8, 1999, filed a motion for summary judgment. On October 6, 1999, the court granted the motion and entered judgment in favor of Moving Defendants on all counts. The next day, October 7, 1999, Plaintiff's counsel sent a letter by facsimile to Moving Defendants' counsel purporting to accept Moving Defendants' previous offer of settlement. Also on October 7, 1999, Plaintiff's counsel wrote to the court stating that the matter had been settled and asked the court to issue the appropriate order. Accordingly, on October 8, 1999, the court entered an Order dismissing the action pursuant to Local Rule of Civil Procedure 41.1(b). Moving Defendants, however, asserted that the matter had not been settled, but rather had been disposed of by the October 6, 1999 Order that granted summary judgment. On October 14, 1999, Moving Defendants filed a motion to vacate the October 8, 1999 Order that dismissed the action. Also on October 14, 1999, Plaintiff filed a petition to enforce the purported settlement. On October 18, 1999, Plaintiff filed a motion for reconsideration of the October 6, 1999 Order that granted summary judgment in favor of Moving Defendants.<sup>2</sup>

## **II. LEGAL STANDARD**

Local Rule 7.1(g) of Civil Procedure for the Eastern

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<sup>2</sup> Both Plaintiff and Moving Defendants have filed notices of appeal.

District of Pennsylvania allows a party to make a motion for reconsideration. "The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985). "Because federal courts have a strong interest in the finality of judgments, motions for reconsideration should be granted sparingly." Continental Cas. Co. v. Diversified Indus., Inc., 884 F. Supp. 937, 943 (E.D. Pa. 1995). Courts will reconsider an issue only "when there has been an intervening change in the controlling law, when new evidence has become available, or when there is a need to correct a clear error or prevent manifest injustice." NL Indus., Inc. v. Commercial Union Ins. Co., 65 F.3d 314, 324 n.8 (3d Cir. 1995). Mere dissatisfaction with the Court's ruling is not a proper basis for reconsideration. Glendon Energy Co. v. Borough of Glendon, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993).

### **III. DISCUSSION**

Plaintiff's motion for reconsideration simply asserts that there is sufficient evidence to create a jury issue as to whether Moving Defendants acted with wilful disregard for Plaintiff's safety and created an opportunity that otherwise would not have existed for Bullock's crime to occur.<sup>3</sup> Plaintiff raises no new

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<sup>3</sup> To prevail under the state-created danger theory when alleging constitutional deprivation under 42 U.S.C. § 1983, a plaintiff must establish the following four elements:

(continued...)

evidence, but rather restates the contentions originally made in his responses and supplemental submissions opposing Moving Defendants' motion for summary judgment. There is nothing in Plaintiff's motion for reconsideration that would cause the court to revisit the October 6, 1999 Order. Because dissatisfaction with the court's ruling is not a proper basis for reconsideration, and because Plaintiff has not offered new evidence, nor has there been an intervening change in controlling law, the motion for reconsideration will be denied.

Plaintiff's next motion is to enforce the alleged settlement.<sup>4</sup> However, in the October 8, 1999 Order, the court

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<sup>3</sup>(...continued)

(1) the harm ultimately caused was foreseeable and fairly direct; (2) the state actor acted in willful disregard for the safety of the plaintiff; (3) there existed some relationship between the state and the plaintiff; [and] (4) the state actors used their authority to create an opportunity that otherwise would not have existed for the third party's crime to occur.

Kneipp v. Tedder, 95 F.3d 1199, 1208 (3d Cir. 1996). In its October 6, 1999 Order, the court determined that, viewing all of the evidence in the light most favorable to Plaintiff, a reasonable jury could not conclude that Moving Defendants acted with willful disregard for Plaintiff's safety or that the state actors used their authority to create an opportunity that otherwise would not have existed for the third party's crime to occur.

<sup>4</sup> Plaintiff contends that during the week of September 20, 1999, Moving Defendants made an offer to settle the case for \$55,000.00. (Pl.'s Mem. of Law in Supp. of Pet. to Enforce Settlement at unnumbered p. 2.) In response to this offer, Plaintiff asked Moving Defendants to "obtain an increase of the defendants' offer by \$8,000.00 for a total of \$63,000.00 to settle all claims." Id. After the court granted summary judgment in favor of Moving Defendants, Plaintiff sent a letter purporting to accept \$55,000.00 to settle the case. Plaintiff

(continued...)

neither retained jurisdiction over the settlement agreement nor incorporated the terms of the settlement agreement into the Order. Consequently, the court lacks jurisdiction to enforce the settlement. In Re: Phar-Mor, Inc. Sec. Litig., 172 F.3d 270, 274 (3d Cir. 1999) (holding district court lacks subject matter jurisdiction to rule upon parties' motion to enforce settlement unless settlement agreement is part of dismissal order or there is an independent basis for exercising jurisdiction). Thus, the court will deny the motion to enforce the settlement.

Finally, Moving Defendants move to vacate the October 8, 1999 Order that dismissed the case pursuant to Local Rule 41.1(b). Because it is unopposed, the court will grant the motion.<sup>5</sup>

#### IV. CONCLUSION

For the foregoing reasons, Plaintiff's motion for reconsideration and petition to enforce the settlement will be

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<sup>4</sup>(...continued)  
asserts that Moving Defendants' offer to settle for \$55,000.00 remained open and that the court should enforce the agreement that the parties made. However, the court notes that a reply to an offer that changes the terms of the offer is not an acceptance, but rather a counter-offer. Yarnall v. Almy, 703 A.2d 535, 539 (Pa. Super. Ct. 1997). It is an established principal of contract law that a counter-offer operates as a rejection, terminating the original offer. Id.; Edward Klein Truck and Heavy Equip. Co., Inc. v. Pittman Mfg. Co., 512 F. Supp. 101, 106 (W.D. Pa. 1981) (same).

<sup>5</sup> To the extent that the court denies Plaintiff's petition to enforce the settlement, Plaintiff joined Moving Defendants' motion to vacate the October 8, 1999 Order so that Plaintiff might pursue his right to appeal.

denied and Moving Defendants' motion to vacate the October 8, 1999 Order will be granted.

An appropriate order follows.

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**ORDER**

AND NOW, TO WIT, this            day of April, 2000, upon consideration of plaintiff John Webb's motion for reconsideration and petition to enforce the settlement and defendants the City of Philadelphia's, the Sheriff of Philadelphia's, Gregory Moses', James Smith's, Luigi Accardo's, Frank Spattocco's, Shaheed Newton's and David Rotan's responses thereto, IT IS ORDERED that said motion and petition are DENIED.

IT IS FURTHER ORDERED that defendants the City of Philadelphia's, the Sheriff of Philadelphia's, Gregory Moses', James Smith's, Luigi Accardo's, Frank Spattocco's, Shaheed Newton's and David Rotan's motion to vacate the October 8, 1999 Order is GRANTED.

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LOUIS C. BECHTLE, J.